

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 600 OF 2017

Sunil Azad Kadga

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

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Mr.Rishi Bhuta, Advocate for the Applicant.
Mr.Arfan Sait, APP for the Respondent – State.
PSI Kature M.B., Narpoli Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 1, 2017.

P.C. :

This is an application for bail in connection with C.R. No.I-413 of 2013, registered with Narpoli Police Station, Bhiwandi, District – Thane for the offences punishable under Sections 302 and 201 read with 34 of IPC.

2 The applicant was arrested on 29th July, 2015. The investigation is completed and the charge-sheet has been filed. The prosecution case is that the complaint was lodged with Narpoli Police Station on 29th November, 2013. One Kailash Patil informed Narpoli Police Station that at about 6:00 a.m. when they

were jogging near Auli Gaon they saw one grey colour Ascent Car passed from their right side in high speed. It was also stated that one lady was being burnt at the said place by two persons. FIR was, thereafter, registered against the unknown person. However, thereafter for a long time there was no clue as to who were involved in the commission of crime. The mother of the deceased lodged missing complaint on 21st March, 2015 with Oshiwara Police Station, Mumbai. Inquiry was conducted by the police in respect of the said complaint. Statements of various persons were recorded. The applicant - accused was also called for inquiry and he was arrested on 29th July, 2017. During the course of investigation, the applicant - accused disclosed that the deceased was killed and is being burnt at the place where the dead body was found in respect to which FIR was lodged with Narpoli Police Station. The statements of the complainant, sister of the applicant and the neighbours were recorded.

3 Learned counsel appearing for the applicant submitted that the applicant has been falsely implicated in this case. The applicant and the deceased were living together as husband and wife. However, since 2013, she has left the house of the applicant and her whereabouts were not known to the

applicant. It is submitted that there is no evidence to connect the applicant with the said crime. The identification parade was conducted after the period of about 2 years from the date of the incident. The witnesses had disclosed that the car is of the Hundai Ascent and what was recovered is Honda City which is of different colour. It is submitted that subsequently the complainant changed his version with regards to colour and make of car. It is submitted that the identification parade was conducted after a period of two years and hence cannot be considered. It is submitted that the statement of the applicant was recorded after the missing complaint was lodged with the police station and he has tendered an explanation that the deceased has left him long back. It is submitted that the co-accused i.e. the brother-in-law of the applicant was also arrested in this case and has been granted bail by this Court. It is submitted that this Court has observed that there are discrepancies in the evidence of the colour and make of the car which is appearing in the C.C.T.V. footage and it is also observed that the evidence of identification parade is not sufficient to connect the said accused with crime. It is further submitted that the statements of the neighbours are vague and they have not specified as to the date on which they had last seen the applicant

in the company of the deceased. It is, therefore, submitted that the applicant may be released on bail.

4 Learned APP opposed the application for bail. He pointed out the missing complaint lodged by the mother of the deceased. In the said statement she has stated that the applicant was giving evasive answers whenever the mother had inquired about the whereabouts of the deceased. It is submitted that the neighbours have constantly stated that during the period when the alleged incident had occurred, they had seen the applicant along with the deceased who had left the house at about 12.00 hrs. There is consistency in statements of witnesses with regard to the time when they left together. It is submitted that the statements of the sister, mother as well as wife of the applicant were recorded which also gives incriminating circumstances against the applicant. It is further submitted that although identification parade was held after a period of two years, the fact remains that it was conducted immediately after the arrest of the applicant. Statements of witnesses indicate that the car was being used by accused no.2. There is recovery of Honda City car which was black in colour.

5 I have perused the charge-sheet which has been annexed to the application. There are statements of the witnesses which clearly show that the applicant and the deceased were residing together. There is no explanation as to how the deceased was missing from the company of the applicant for a long period of time. Explanation tendered by the applicant during the enquiry of missing complaint is not plausible. The statements of the witnesses who are the neighbours of the applicant are consistent with the fact that the applicant and the deceased had left the house somewhere in the midnight. During the course of investigation in relation to the missing complaint lodged by the mother of the deceased, the applicant had disclosed that the deceased was being killed and body was burnt at the place of incident. Thereafter, the link was established with the FIR which is lodged with Narpoli Police Station. It is pertinent to note that the statement of the mother of the deceased, as well as sister and the first wife of the applicant also speaks of incriminating circumstances to corroborate the involvement of the applicant. The case of the co-accused who has been granted bail stands on different footing. Although this court had made observations with regards to discrepancy regarding car used in crime and identification parade, there are other

circumstances and evidence against the applicant. There is evidence against the applicant which *prima facie* establish his involvement in the crime. In the circumstances, no case for bail is made out.

6 Hence, I pass the following Order:

:: ORDER ::

- (i) Bail Application No.600 of 2017 is rejected.

(PRAKASH D. NAIK, J.)